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February 25, 2005

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 22, 2004

Case Number: TSO-0140

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹ A local DOE Security Office (LSO) suspended the individual's access authorization pursuant to the provisions of Part 710. In this Decision I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should not be restored at this time.

I. Background

The individual has held a DOE security clearance for several years while employed by various DOE subcontractors. During a routine background investigation in 2001, the LSO learned that the individual had failed to disclose two alcohol-related arrests on the security form that she had completed as part of the reinvestigation process. In March 2002, the LSO conducted a Personnel Security Interview (PSI) with the individual to obtain information regarding the circumstances surrounding the two arrests and the extent of the individual's alcohol use. After the PSI, the LSO referred the individual to a board-certified psychiatrist (DOE consultant-psychiatrist) for a forensic psychiatric evaluation. The DOE consultant-psychiatrist examined the individual in September 2002, and memorialized his findings in a report (Psychiatric Report or Exhibit 3). In the Psychiatric Report, the DOE consultant-psychiatrist opined that the individual suffers from alcohol abuse. The DOE consultant-psychiatrist also found that the individual does not present evidence of adequate rehabilitation or reformation.

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

In September 2004, the LSO initiated formal administrative review proceedings. The LSO first informed the individual that her access authorization had been suspended pending the resolution of certain derogatory information that created substantial doubt regarding her continued eligibility to hold a security clearance. In a Notification Letter that it sent to the individual, the LSO described this derogatory information and explained how that information fell within the purview of two potentially disqualifying criteria. The relevant criteria are set forth in the security regulations at 10 C.F.R. § 710.8, subsections f and j (Criteria F and J respectively).²

Upon her receipt of the Notification Letter, the individual exercised her right under the Part 710 regulations and requested an administrative review hearing. On September 24, 2004, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. Subsequently, I convened a hearing within the regulatory time frame specified by the Part 710 regulations.

At the hearing, four witnesses testified. The LSO called one witnesses and the individual presented her own testimony and that of two witnesses. In addition to the testimonial evidence, the LSO submitted 13 exhibits into the record; the individual tendered three exhibits. On February 1, 2005, I received the hearing transcript (Tr.) at which time I closed the record in the case.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security

² Criterion F relates to information that a person “[d]eliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive National Security Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to § 710.20 through § 710.30.” 10 C.F.R. § 710.8(f). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8 (j).

and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Hearing Officer’s Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two potentially disqualifying criteria as bases for suspending the individual’s security clearance, *i.e.*, Criteria F and J.

With respect to Criterion F, the LSO questions the individual’s candor because she omitted two arrests from a Questionnaire for National Security Positions (QNSP) that she completed on January 29, 2001. One of the arrests occurred in March 1998. At that time, the police charged the individual with Driving While Intoxicated (DWI), Reckless Driving and Open Container. The other arrest occurred in October 1996 when the police charged the individual with Disorderly Conduct and Disobeying a Lawful Order. From a security perspective, the deliberate falsification or omission of significant information during an official inquiry on a matter that is relevant to a determination regarding eligibility for a DOE access authorization raises questions about a person’s trustworthiness, reliability, and honesty and his or her ability to properly safeguard classified information. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline E, ¶ 15.

As for Criterion J, the LSO relates the following information. First, a DOE consultant-psychiatrist diagnosed the individual as suffering from alcohol abuse in 2002. Second, the individual has been arrested on four occasions in a five-year period (1996, 1998, 1999 and 2001) for incidents involving alcohol. The information set forth above clearly raises questions about the individual’s alcohol use. Excessive alcohol consumption is a security concern because the behavior can lead to the exercise of questionable judgment, unreliability, and a failure to control impulses, and can increase the risk that classified information may be unwittingly divulged. *See* Appendix B to Subpart A of 10 C.F.R. Part 710, Guideline G, ¶ 21.

IV. Findings of Fact

Most of the facts in this case are uncontested. Where there are discrepancies in the record, I will note them as appropriate.

Between 1996 and 2001, the individual's excessive consumption of alcohol resulted in her being arrested three or four times.³ The individual's first alcohol-related arrest occurred in 1996. Ex. 3 at 2. The circumstances surrounding this arrest are as follows. The police were dispatched to a bar on a disturbance call. *Id.* Upon arriving, the police found the individual to be highly intoxicated and unable to walk, talk, standup or sit on a barstool. *Id.* The police transported the individual to her home. *Id.* When the individual became abusive towards the police and her family, the police arrested the individual and charged her with Disorderly Conduct and Disobeying a Lawful Order. *Id.* The individual told the DOE consultant-psychiatrist and testified at the hearing that she experienced an alcoholic blackout during the incident and could not recall any of its details. *Id.*, Tr. at 29.

The individual's second alcohol-related arrest occurred in 1998 when she was arrested for DWI, Reckless Driving, and Open Container. According to the record, the individual's blood alcohol level (B.A.C.) as measured by a breathalyzer prior to her arrest yielded results of .10 and .08 on two administrations of the test. Ex. 3 at 3. The individual testified at the hearing that she does not recall the details relating to this arrest because she again experienced an alcoholic blackout. Tr. at 29.

In 1999, the individual was arrested a third time for an incident involving alcohol. According to the record, the individual and her husband were drinking at home when the two became embroiled in a physical confrontation. Ex. 3 at 3. The police were called and the individual was arrested for domestic violence. *Id.* The individual claims to have no memory of this incident and attributes her inability to recollect it to an alcoholic blackout. Tr. at 29.

The fourth incident involving alcohol occurred in June 2001. The individual admits to drinking to the point of intoxication before she and another woman got into a physical fight. Ex. 3 at 4. The individual suffered a fractured nose in the fight. *Id.* The individual suggested at the hearing that the court proceeding that addressed the issues surrounding the 2001 altercation was civil, not criminal, in nature.

On January 29, 2001, the individual completed a QNSP as part of a routine background investigation. Ex. 12. She failed to report her 1996 and 1998 alcohol-related arrests on that security form. *Id.* She did report her 1999 arrest on her QNSP. *Id.*

³ At the hearing, the individual disputes that the police arrested her for assault and battery on June 24, 2001. Tr. at 28. The individual claims that after she got into the fight with another woman, the individual went to the hospital where her friend persuaded her to press charges against the other woman involved in the fight. *Id.* The individual admitted at the hearing that she was intoxicated at the time she became embroiled in the physical altercation in 2001. *Id.* The LSO did not submit a police report into the record so I cannot independently confirm whether the individual was arrested in connection with this matter.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).⁴ After due deliberation, I have determined that the individual's access authorization should not be restored at this time. I cannot find that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion F

The individual has provided conflicting reasons for not listing the 1996 and 1998 arrests on her 2001 QNSP. During the 2002 PSI, the individual first claimed that she failed to list these two arrests in 2001 because she incorrectly read the question on the security form. Ex. 8 at 18. Later in that same PSI, the individual told the DOE that she did not know why she had failed to list the two arrests on the QNSP. *Id.* at 32. At the hearing, the individual testified that she failed to disclose her two arrests on the QNSP because she "was embarrassed and guilty about what she had done." Tr. at 16.

It is clear from the individual's hearing testimony that she deliberately, not inadvertently, omitted her 1996 and 1998 arrests from her 2001 QNSP. I find the individual's failure to respond truthfully to the questions about her prior arrests on the QNSP to be a serious matter. Lying on the form that supplies the information on which a security clearance is granted or continued subverts the integrity of the access authorization process.

Cases involving verified falsifications are difficult to resolve because there are neither experts to opine what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the falsification and the individual's subsequent history in order to assess whether the individual can be considered rehabilitated from his or her falsehoods and whether restoring the individual's security clearance would pose a threat to national security. *See e.g. Personnel Security Hearing* (Case No. TSO-0024), <http://www.oha.doe.gov/cases/security/tso0024.pdf>; *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 82,823 (1999) *aff'd*, *Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by OSA, 2000).

⁴ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

In this case, the individual has acknowledged her wrongdoing in failing to provide truthful responses to the DOE about her arrests. Furthermore, based on the individual's testimony and my observation of her demeanor at the hearing, I am convinced that she fully understands the seriousness of her deliberate omissions on the QNSP. Moreover, at the hearing the individual expressed remorse for her lack of candor. She also testified that she will provide candid responses in the future to the DOE about matters potentially impacting upon her access authorization. All of these factors augur in the individual's favor.

Against these positive factors, I weighed the following negative ones. First, it is significant, in my opinion, that the individual did not voluntarily disclose her arrests to the LSO before the LSO confronted her with the arrests. I am especially troubled that the individual did not candidly tell the LSO why she had omitted the information in question when the LSO first confronted her with the arrests in 2002. The individual's statements during the 2002 PSI suggest to me that she was attempting to portray the omissions in question as inadvertent as opposed to deliberate. It was not until the hearing in 2005 that the individual honestly explained that she had deliberately lied on the 2001 QNSP because she was embarrassed to admit the truth. Second, I was surprised by the testimony of the individual's husband and son that neither knew the individual had omitted arrests on her security forms and that those omissions were at issue in the hearing. The individual's concealment of this information from her family raises questions in my mind about what other kinds of information she would conceal from the DOE and others in the future because she might fear embarrassment. Third, I cannot ascribe the individual's deliberate omissions to immaturity because she was a mature person at the time she executed the security form in question. Fourth, I am concerned that the individual's motive for lying, namely fear of embarrassment and guilt, raises concerns about her susceptibility to blackmail, coercion and duress. She did not convince me at the hearing that my concerns in this regard are baseless.

I also considered the length of time that the individual concealed the truth about her arrests from the DOE.⁵ The individual deliberately falsified information about her arrests on her QNSP in 2001. She did not admit her willful omissions on that security form until the hearing in 2005. In other personnel security cases, Hearing Officers have stated that it is a subsequent pattern of responsible behavior that is the key to abating security concerns that arise from irresponsible action. *See Personnel Security Hearing* (Case No. VSO-0448), 28 DOE ¶ 82,816(2001) (affirmed by OSA 2001) (11-month period not sufficient to mitigate four year period of deception), *Personnel Security Hearing* (Case No. VSO-0440), 28 DOE ¶ 82,816 (2001) (affirmed by OSA 2001)(18 months of responsible, honest behavior sufficient evidence of reformation from dishonesty that spanned six months in duration), *Personnel Security Hearing*, (Case No. VSO-0289) 27 DOE ¶ 82,823 (1999), *aff'd Personnel Security Review*, 27 DOE ¶ 83,025 (2000) (affirmed by

⁵ It is noteworthy that as a security clearance holder, the individual had an obligation to report the 1996 and 1998 arrests to the DOE promptly after they occurred. She did not. While the individual's failure to report these two arrests soon after they occurred is not a separate security concern at issue here, the individual's failure to discharge her reporting obligations is relevant insofar as it reflects negatively on her trustworthiness and reliability, key factors in a Criterion F determination.

OSA 2000) (19-month period not sufficient to mitigate lying on security form after a 12-year period of concealment). In this case, the individual's pattern of responsible conduct is measured beginning in January 2005 when she first admitted the truth to the DOE about the deliberate nature of her omissions. I simply cannot find that the individual is rehabilitated from her four years of deception by a period of one month of responsible, honest conduct. More time needs to elapse before I could make a predictive assessment that the individual has mitigated the security concerns associated with her past lying.

In the end, I find that the negative factors in this case simply outweigh the positive ones. For that reason, I find that the individual has not mitigated the Criterion F concerns at issue in this proceeding.

B. Criterion J

The individual does not dispute that she suffers from alcohol abuse.⁶ Tr. at 18. Therefore, the pivotal question in this case is whether the individual has presented convincing evidence that she is adequately reformed or rehabilitated from her alcohol abuse.

1. The Individual's Testimony

At the hearing, the individual testified that she stopped consuming alcohol in June 2003. *Id.* at 8. She also testified that she began attending Alcoholics Anonymous (AA) in December 2004, although she has neither begun the 12-step AA process nor secured an AA sponsor. *Id.* at 22-23. In addition, the individual has seen an alcohol counselor on two occasions. *Id.* at 23.

Under questioning, the individual revealed that she did not seek assistance for her alcohol issues because she was too embarrassed. *Id.* at 25. She explained that she did not want anyone in her community to know that she is an alcoholic, and admitted that none of her co-workers know yet that she has a drinking problem. *Id.* at 21, 36. The individual testified that she hopes that AA will provide her with the strength in the future to be open about her drinking problems with her co-workers. *Id.* at 38.

2. The Husband's Testimony

The individual's husband confirmed at the hearing that the individual stopped drinking approximately one and one-half years ago. *Id.* at 53. The husband testified that he has stopped drinking alcohol but is not attending AA. *Id.* at 57-59. He testified that there is currently no alcohol in the house. *Id.* He related that when others consume alcohol around him and his wife, they will drink coffee instead. *Id.* at 56. The husband also testified that now that he and his wife are sober, they do things together instead of going their separate ways. *Id.* at 59.

⁶ The DOE consultant-psychiatrist explained in detail in the Psychiatric Report why the individual's alcohol use and concomitant conduct fall within the definition of Alcohol Abuse as that term is defined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Ex.3.

3. The Son's Testimony

The individual's adult son who lives with his mother and father also testified at the hearing. The son testified that he last saw his mother drink alcohol one and one-half years ago. *Id.* at 63. He also confirmed that there is no alcohol in his mother's house. *Id.* at 64. The son provided very moving testimony as he explained how difficult it was to be at home with two parents who consumed alcohol to excess. *Id.* at 65-66. He explained that his parents constantly argued when they drank. *Id.* He added that he would sometimes go and stay with a friend or his grandparents to avoid being in the house with his parents. *Id.* The son also testified that it was hard for his mother to remain sober after June 2003 because his father was drunk all the time. *Id.* at 68. He encouraged his mother's sobriety by telling her, "You can't let him bring you down, you have to change your life." *Id.* When asked how he thought he mother would react if his father resumed drinking, the son replied, "it will affect her but I don't think that she would start drinking again." *Id.* at 70.

3. The DOE Consultant-Psychiatrist's Testimony

The DOE consultant-psychiatrist listened to the testimony of the individual, her husband, and her son before he testified himself. He testified that the following facts are in the individual's favor: she appears to have stopped drinking, she has begun attending AA, she has the support of her family, her family structure is starting to change for the better, her husband has stopped drinking, and there are a number of good structures in place for her to maintain sobriety. Juxtaposed to these positive factors are the following negative ones highlighted by the DOE consultant-psychiatrist in his testimony. The individual has been in treatment only one month, having attended only three AA meetings and two counseling sessions during this time. Since honesty has been an issue with the individual in the past, the DOE consultant-psychiatrist expressed concern that the individual "will keep her word and maintain sobriety." *Id.* at 81. The DOE consultant-psychiatrist also pointed out that the individual has tried and failed in the past to maintain her sobriety. *Id.* at 91. Finally, the DOE consultant-psychiatrist found it troubling that the individual chose to ignore his suggestion in the Psychiatric Report that she obtain outside assistance for her alcohol abuse.⁷

The DOE consultant-psychiatrist concluded his testimony that the individual must maintain her sobriety and remain in treatment for one year until December 2005 before he could consider her reformed or rehabilitated.

4. Hearing Officer Evaluation of Evidence

Based on the record before me, I find that the individual is making positive progress towards achieving rehabilitation and reformation from her alcohol abuse. For example,

⁷ The DOE consultant-psychiatrist opined in his Psychiatric Report that the individual needs to attend AA a few times each week, perhaps with counseling for a period of one to two years. In addition, the DOE consultant-psychiatrist opined that the individual needs to maintain sobriety. Ex. 3.

the individual's husband and son corroborated the individual's testimony that she had stopped consuming alcohol in June 2003. Tr. at 53, 63. The individual provided a letter from an intake coordinator at AA showing that she had attended three AA meetings as of January 5, 2005. Ex. B. In addition, an Employee Assistance Program Counselor provided a letter stating that the individual will begin weekly sessions with him. Moreover, the individual and her husband testified that they no longer have alcohol in their home, a fact that suggests to me that the individual is serious about maintaining her sobriety. Finally, after considering the individual's son's convincing testimony and earnest demeanor at the hearing, I find that he has been and will continue to be a source of support for his mother as she tries to maintain her sobriety.

Despite these positive factors, there are several negative ones that reinforce, in my view, the DOE consultant-psychiatrist's opinion that 19 months of sobriety alone is insufficient in this case for me to find that the individual is rehabilitated or reformed from her alcohol abuse. First, the individual has lied before concerning the length of her sobriety. In September 2002, the individual told the DOE consultant-psychiatrist that she had stopped drinking one year earlier, i.e., September 2001. Ex. 3 at 4. In the Psychiatric Report, the DOE consultant-psychiatrist questioned the individual's credibility regarding her self-reported length of sobriety in light of laboratory test results from September 2002 showing that the individual had abnormally elevated liver enzymes test results.⁸ Ex. 3. At the hearing, the individual testified that before June 2003 she had remained sober for only three or four months at a time before resuming her alcohol consumption. Tr. at 93. This hearing testimony strongly suggests that the individual lied to the DOE consultant-psychiatrist about being sober for a full 12 months before her 2002 psychiatric examination.

Second, the individual's resolve to maintain her sobriety will be tested by her husband who is also an alcoholic. By her own report, the individual's husband used to come home drunk every day. Ex. 11 at 27. According to the individual, her husband stopped drinking alcohol in September 2004 but has refused to attend AA or seek other outside help. Tr. at 24.

Third, the individual admits that her past attempts to remain sober without outside assistance have been unsuccessful. She testified that in the past she stopped drinking for awhile but resumed drinking within a few months thereafter. *Id.* at 26. This past pattern is significant, in my opinion, in assessing the likelihood that the individual might relapse. From my perspective, the structure, discipline and accountability offered by a program such as AA or alcohol counseling might increase the likelihood that the individual will be successful in maintaining her sobriety.

In assessing whether the individual's rehabilitative efforts to date are sufficient to mitigate the Criterion J security concerns at issue here, I accorded substantial weight to the opinion of the DOE consultant-psychiatrist regarding his recommendations for

⁸ In the Psychiatric Report, the DOE consultant-psychiatrist stated that the individual's abnormally elevated liver enzymes strongly suggested, but did not prove, that the individual's alcohol consumption continued until the time of the psychiatric examination.

rehabilitation. According to the DOE consultant-psychiatrist's testimony, the individual must remain in AA and attend meetings a few times each week, continue with her individual counseling, and remain sober until December 2005 before she can be considered rehabilitated. *Id.* at 83. As the DOE consultant-psychiatrist pointed out at the hearing, the risk of relapse in this case is a high stakes game in view of the serious consequences associated with the individual's past drinking, namely, her alcoholic blackouts, her physical altercations, her arrests, and her DWIs. I also seriously considered the individual's own testimony as evidence in concluding that she needs significantly more time working through her alcohol issues before she can achieve success in her recovery efforts. Specifically, as of the date of the hearing the individual had neither started any of the 12 steps in the AA program nor secured an AA sponsor.

In the end, after carefully weighing all the factors described above, I find that the negative factors outweigh the positive ones. For this reason, I find that the individual has not brought forth sufficient evidence to mitigate the security concerns predicated on Criterion J in this case.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to mitigate the security concerns advanced by the LSO. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: February 25, 2005